

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Roy Den Hollander

Plaintiff on behalf of himself and
all others similarly situated,

v.

Copacabana Nightclub, China Club, Guest House,
A.E.R. Nightclub, Lotus, Sol, and Jane Doe
Promoters,

Defendants.
-----X

Docket No. 07 CV 5873 (MGC)

NOTICE OF MOTION TO DISMISS
PURSUANT TO FED.R..CIV.P.
12(b)(6)

SIR / MADAM:

PLEASE TAKE NOTICE that upon the annexed affirmation of Robert S. Grossman, Esq. dated November 7, 2007, and upon the Memorandum of Law submitted herewith, and upon all the pleadings and proceedings heretofore had herein, the Defendant Sol shall move this Court at the United States District Court of the Southern District of New York at 500 Pearl Street, New York, New York, before the **Honorable Judge Miriam Cedarbaum** on the **29th day of November, 2007 at 9:30am** of that day or soon thereafter as counsel can heard for an order:

1. Dismissing the Complaint with prejudice, Pursuant to Fed. R. Civ. P. 12(b)(6), for failure of the pleading to state a claim upon which relief can be granted;
2. Awarding Defendant Sol reasonable legal fees for having to defend itself in this baseless action, and for having to make the instant motion;
3. Awarding Defendant Sol costs and disbursements of this application;
4. Awarding Defendant Sol such other and further relief as this Court deems just and proper.

Dated: Garden City, New York
November 7, 2007

Adam B. Kaufman & Associates, PLLC

By: s/ Robert S. Grossman (RG 8043)
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To: **Plaintiff, pro se**
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**DECLARATION IN SUPPORT
OF MOTION TO DISMISS
PURSUANT TO FED.R.CIV.P.
12(b)(6)**

I, Robert S. Grossman, an attorney admitted to practice in the State of New York and the U.S. Southern District Court of New York, affirm under the penalty of perjury pursuant to 28 U.S.C. § 1746 the following:

1. I am of counsel to the firm of Adam B. Kaufman & Associates, P.L.L.C., counsel for the Defendant, Sol, in the above entitled action. I submit this Affirmation in Support of Defendant Sol's Motion to Dismiss the Complaint for failure of the pleading to state a claim upon which relief can be granted pursuant to Federal Rule 12(b)(6) and joining with Defendant AER Lounge, LLC ("AER") in its motion to dismiss the Complaint, for an award to Defendant Sol of reasonable legal fees for having to defend itself in this baseless action, and for having to make the instant motion; for an award to Defendant Sol for the costs and disbursements of this application; and for such other and further relief as this Court deems just and proper.
2. Upon information and belief, the Plaintiff in this matter is an attorney licensed to practice law before the Courts of New York State and this Honorable Court. The Defendant "Sol" is an establishment in the City of New York operated by an entity as a night club, as, upon information and belief, are the other Defendants named by their "trade names".

3. The Plaintiff claims that the Complaint (copy annexed hereto as Exhibit “A” without exhibits) alleges that defendant nightclubs, including Sol, have violated the Plaintiff’s civil rights under 42 U.S.C. § 1983 by sponsoring “Ladies’ Nights” wherein admission to the defendants’ nightclubs are reduced in price or complimentary for women, but not for men. The Complaint alleges as follows
 4. The Defendants are nightclubs located in New York City, opened to the public, serve alcoholic and non-alcoholic beverages, their operations are entwined with the New York State Division of Alcoholic and Beverage Control and the New York City Consumer Affairs Department, and the nightclubs, along with New York State and the City, benefit from invidiously discriminating against the plaintiff class. The defendants/ promoters act as agents for the nightclubs.
 5. The plaintiff, individually and on behalf of all the others similarly situated, both past and future, challenges the practice and policy of the defendants that charges men more for admission than females or makes a man’s admission more timely or economically burdensome than for females.
 6. As Exhibit A shows, the defendants allow females in free up to a certain time but charge men for admission until that same time, or allow ladies in free over a longer time span than men. Examples of defendants’ commonly practiced form of invidious discrimination against men by New York nightclubs are : “Ladies free till Midnight, Gents \$10”, or “Free for ladies before 12 AM, Guys are free before 11PM.”

Complaint at ¶¶ 4-6. See Exhibit “A” annexed hereto.

4. Assuming the allegations to be true, as is more fully set forth in Defendant Sol’s Memorandum of Law, the Plaintiff’s Complaint has no basis in law and should be dismissed. Indeed, it has been conclusively determined that merely holding a liquor license is not sufficient grounds for finding state action under 42 U.S.C. § 1983. The facts alleged by the Plaintiff in its Complaint are insufficient as a matter of law to establish the requisite nexus showing that defendants acted under the color of state law when, assuming the Plaintiff’s allegations to be true, the Defendant’s hosted “Ladies’ Nights” by simply holding a liquor license issued by New York State.

5. In a telephone conference with the Plaintiff and counsel for the other Defendants, I asked if the Plaintiff would withdraw this action, and he declined to do so, clearly indicating his intention to proceed with this litigation.
6. For the forgoing reasons, it is respectfully submitted that the Complaint be dismissed with prejudice, costs and legal fees.
7. This declaration has been submitted in good faith.

Dated: Garden City, New York
November 7, 2007

By: s/ Robert S. Grossman (RG 8043)